

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

June 13, 2013

In the Matter of DUROCHER/GORKIEWICZ,  
Minors.

No. 312552  
Wayne Circuit Court  
Family Division  
LC No. 10-495515-NA

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Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court's orders terminating her parental rights to her children; the trial court terminated her rights to ND under MCL 712A.19b(3)(b)(ii), (g), and (j), and terminated her rights to EG under MCL 712A.19b(3)(b)(ii), (g), (h), (j), and (l). Because we conclude that there were no errors warranting relief, we affirm.

The Department of Human Services sought termination of respondent's parental rights after her boyfriend's half-wolf dog mauled ND's younger sibling, KH, to death. Respondent slept through the attack in the room below her son's room.

I. TERMINATION

A. STANDARDS OF REVIEW

Respondent first argues that the trial court erred when it found that the Department had proved the grounds for termination to both children by clear and convincing evidence. She also argues that the trial court could not terminate her rights because the Department failed to provide her with reunification services.

The Department bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once it has proven a statutory ground for termination by clear and convincing evidence, the trial court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews the trial court's findings for clear error. MCR 3.977(K). The clear error standard controls this Court's review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous when, "although there is evidence to support it,

the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

## B. REUNIFICATION SERVICES

“In general, when a child is removed from the parent’s custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). A parent’s contention that the Department did not offer reasonable services “ultimately relates to the sufficiency” of the evidence supporting termination of parental rights. *Id.* at 541. However, in this case, the Department had no obligation to offer respondent reunification services.

The Department “is not required to provide reunification services when termination of parental rights is the agency’s goal.” *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Under MCL 722.637(1), our Legislature mandated that “within 24 hours after the department determines that a child was severely physically injured as defined in [MCL 722.628], . . . the department shall submit a petition for authorization by the court under” MCL 712A.2(b). Severe physical injury “means an injury to the child that requires medical treatment or hospitalization and that seriously impairs the child’s health or physical well-being.” MCL 722.628(3)(c). And the Legislature specifically provided that the Department can seek immediate termination for certain egregious cases of abuse or neglect. See MCL 722.638(2).

In the July 2010 petition, the Department noted that “[KH] was mauled to death . . . and received multiple crushing injuries, multiple dog bites and one leg was severed. [Respondent] was home at the time of the incident and did not intervene on behalf of the child.” The Department noted that it had not taken efforts to prevent ND’s removal and cited the existence of “[b]attering, torture, or other severe physical abuse,” “[l]oss or serious impairment of an organ or limb,” and “[l]ife threatening injury” to KH. Because the evidence showed that respondent failed to protect KH from a brutal death by mauling, we conclude that the Department rightfully pursued termination of respondent’s parental rights to both children at the initial dispositional hearing. See MCL 722.638(1)(a)(iii), (iv), (v), and (2). And because its goal to terminate respondent’s parental rights remained the same throughout the proceedings, it had no obligation to provide respondent with reunification services. *In re HRC*, 286 Mich App at 463.

## C. PHYSICAL INJURY

Under MCL 712A.19b(3)(b)(ii), a person’s parental rights to a child may be terminated where the “child or a sibling of the child has suffered physical injury” and the parent “had the opportunity to prevent the physical injury” and where “the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” Here, there was clear and convincing evidence that the children’s brother, KH, died from injuries he suffered in a dog attack while respondent remained sleeping in a bedroom directly beneath his room. ND’s stated that before July 2010, a wolf named Chase lived in the home that ND shared with KH, respondent, and her boyfriend, and had, without provocation, approached and bit both ND and KH. An investigator testified that respondent told her on the day of KH’s death that one of the dogs “was a husky wolf hybrid,” and she did not know where the dogs were when she put KH to bed. Respondent testified that she had seen the dogs nipping

at the children and, on the night of KH's death, she put him in bed, went downstairs to sleep, did not check on him thereafter, took some Xanax, and heard nothing during the night. There was also an autopsy report that documented KH's gruesome injuries and concluded "that death was due to multiple crush injuries due to multiple dog bites."

The record also clearly and convincingly proved that there was "a reasonable likelihood that the child[ren] will suffer injury or abuse in the foreseeable future if placed in the parent's home." MCL 712A.19b(3)(b)(ii). ND revealed that "many, many times" respondent left him alone with KH, beginning when ND "was six years old." And, although respondent usually left them for brief periods, on one occasion she left seven-year-old ND at home alone overnight so she could go to a party. A friend of respondent confirmed that respondent had admitted to leaving ND and KH home alone and when the friend went to pick up respondent at her house she did not believe respondent's claims that there was someone watching the boys because it did not appear that anyone else was inside the house.

There was also extensive evidence documenting respondent's drug abuse between 2005 and June 2012. She abused alcohol, Loracet, and other pain relievers, Xanax, cocaine, heroin, marijuana, and methadone at her home to the point that respondent often became incoherent. Respondent conceded that while pregnant with EG, she had used Loracet without a prescription, and two days before EG's birth she used cocaine. Throughout the proceedings, respondent minimized her drug use, exhibited a lack of insight into the effects of her drug abuse, and disavowed that it had played any role in KH's death.

Given this record, we cannot conclude that the trial court clearly erred when it found that the grounds stated in § 19b(3)(b)(ii) had been proved by clear and convincing evidence.

#### D. CARE AND CUSTODY

Under MCL 712A.19b(3)(g), the trial court may terminate a parent's parental rights when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child[ren] and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child[ren]'s age." The record evidence clearly and convincingly supported termination under this ground. Respondent's decisions to leave ND and KH unsupervised, her failure to prevent KH's death, her longstanding drug abuse—even during her most recent pregnancy, and her inability to see the harm that her drug abuse inflicts on her children established both respondent's failure to properly parent her children and the unlikelihood that she would rectify the problem within a reasonable time.

#### E. RISK OF HARM

The evidence additionally clearly and convincingly established that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child[ren]'s parent, that the child[ren] will be harmed if . . . returned to the home of the parent." MCL 712A.19b(3)(j). Given the evidence already cited, the record clearly supports a finding that there is a reasonable likelihood that ND and EG would endure harm if returned to respondent's home.

## F. IMPRISONMENT

With respect to EG, the trial court also found that there was clear and convincing evidence to support termination under MCL 712A.19b(3)(h), which concerns parents who are imprisoned. In July 2012, respondent pleaded nolo contendere to involuntary manslaughter in KH's death, for which she received a sentence of 29 months to 15 years. According to respondent, as of the date of the termination hearing, her earliest release date would be December 2014. The trial court apparently found that, with regard to EG, respondent's imprisonment made it unlikely that respondent would have the capacity to care for EG within a reasonable period of time given her young age. But the court neglected to make specific findings or a conclusion concerning whether respondent may have made arrangements for EG's care. See *In re Mason*, 486 Mich 142, 161; 782 NW2d 747 (2010). Nevertheless, even if the trial court erred as to this ground for terminating respondent's parental rights, because the court did not clearly err in terminating respondent's parental rights to EG under the remaining statutory grounds, the error was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

## G. PRIOR TERMINATION

Respondent suggests that if this Court determines that the trial court erroneously terminated her parental rights to ND, the trial court's application of MCL 712A.19b(3)(l) to EG would also be erroneous. With § 19b(3)(l), the Legislature authorized termination of parental rights if "[t]he parent's rights to another child were terminated as a result of proceedings under" MCL 712A.2(b). With respect to EG, the record contained clear and convincing evidence establishing that the circuit court had terminated respondent's parental rights to ND in a proceeding under MCL 712A.2(b). The adjudication trial and dispositional hearing concerning ND concluded on August 7, 2012, when the court entered an order terminating respondent's parental rights to ND. The adjudication trial and dispositional hearing regarding EG, took place on August 31, 2012. Because the court had previously and properly terminated respondent's parental rights to ND, the court did not clearly err in terminating respondent's parental rights to EG under § 19b(3)(l).

## H. BEST INTERESTS

Respondent lastly maintains that the trial court failed to properly consider at the time of either child's termination proceeding that the child was or could be placed in a relative placement, which is a factor against termination. Respondent relies on the statement in *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012), where this Court stated that "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal."

ND's father testified that ND had resided in his custody for the past two years. The trial court acknowledged that it could take temporary custody, but explained that that would not be best for the child:

The alternative to terminating parental rights would be to take temporary custody, regarding not just the Dad, but the Mom, too, and then there would be a custody hearing. And I know what Mr. Marshall [ND's representative] would ask me to do. He'd ask me to take judicial notice of the goings on in the criminal trial and the notes of what went on during this. And Dad's attorney, . . . and Mr. Marshall would both ask me to order no visitation, no contact whatsoever in view of the kind of things that have gone on here.

The court also emphasized the unlikelihood that respondent might soon have the capacity to care for ND.

The trial court's findings and conclusion regarding ND's best interests embody an explicit consideration of the propriety of terminating respondent's parental rights even given ND's placement with his father. *In re Olive/Metts*, 297 Mich App at 43. Furthermore, ample evidence supports the court's conclusion that termination of respondent's parental rights served ND's best interests. There was strong evidence that ND would be harmed if left to respondent's care and there was evidence that, since being removed from his mother, ND was well-behaved, doing well in school, healthy, and very happy.

Respondent also posits that the trial court "fail[ed] to explicitly consider how the fact that [EG]'s permanency plan was return to her father[] . . . impacted its best interest determination." Respondent's argument lacks merit for many reasons. Respondent concedes that at the time of the adjudication trial and dispositional hearing, EG was not placed with her father or another relative. This Court's holding in *In re Olive/Metts*, 297 Mich App at 43, only applies if "a child is living with relatives when the case proceeds to termination." The circuit court made findings regarding EG's best interests, which explicitly reference the Department's plan to reunite EG and her father. Moreover, substantial evidence supports the court's conclusion that termination of respondent's parental rights served EG's best interests.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly  
/s/ Christopher M. Murray  
/s/ Mark T. Boonstra